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**LOPEZ TAX SERVICE, INC., CARLOS C.  
LOPEZ, KRISTEENA S. LOPEZ, and LATINO  
TAX PROFESSIONALS ASSOCIATION, LLC**

**E-filing**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**EDL**

**CV 12 2654**

LOPEZ TAX SERVICE, INC., a California  
corporation, CARLOS C. LOPEZ, an  
individual, KRISTEENA S. LOPEZ,  
an individual, and LATINO TAX  
PROFESSIONALS ASSOCIATION, LLC,  
a California limited liability company,

Plaintiffs,

vs.

THE INCOME TAX SCHOOL, INC., a  
Virginia corporation,

Defendant.

) Case No.:

) **COMPLAINT FOR**  
) **DECLARATORY RELIEF RE:**  
) **(1) COPYRIGHT INFRINGEMENT**  
) **AND (2) DISPARAGEMENT**

1 Plaintiffs LOPEZ TAX SERVICE, INC., CARLOS C. LOPEZ, KRISTEENA S. LOPEZ, ,  
2 and LATINO TAX PROFESSIONALS ASSOCIATION, LLC, (collectively "Lopez") seek a  
3 declaratory judgment that they have not infringed any valid copyrights of the Defendant and have  
4 not disparaged Defendant, THE INCOME TAX SCHOOL, INC. ("ITS") as it has claimed.

#### 5 THE PARTIES

6 1. Plaintiff LOPEZ TAX SERVICE, INC. is a corporation organized and existing under  
7 the laws of California with its principal place of business at 1588 Moffett St. Ste. F, Salinas, CA  
8 93905-3365. LOPEZ TAX SERVICE, INC. is a citizen of California. LOPEZ TAX SERVICE,  
9 INC. is in the business of providing tax preparation services and also publishes continuing education  
10 materials including those to qualify income tax professionals to take certain Internal Revenue  
11 Service examinations.

12 2. Plaintiffs CARLOS C. LOPEZ and KRISTEENA S. LOPEZ are officers of LOPEZ  
13 TAX SERVICE, INC., are residents of Salinas, California and are citizens of California.

14 3. Plaintiff LATINO TAX PROFESSIONALS ASSOCIATION, LLC is a California  
15 limited liability company, with its principal place of business at 1588 Moffett St. Ste. F, Salinas, CA  
16 93905-3365. LATINO TAX PROFESSIONALS ASSOCIATION, LLC has two members, Plaintiffs  
17 CARLOS C. LOPEZ and KRISTEENA S. LOPEZ who are both residents and citizens of California.  
18 LATINO TAX PROFESSIONALS ASSOCIATION, LLC is therefore a citizen of California.  
19 LATINO TAX PROFESSIONALS ASSOCIATION, LLC provides services to tax professionals  
20 including selling continuing education materials to qualify income tax professionals to take certain  
21 Internal Revenue Service examinations.

22 4. On information and belief, Defendant THE INCOME TAX SCHOOL, INC. is a  
23 Virginia corporation with its principal place of business in Glen Allen, Virginia. On information and  
24 belief, THE INCOME TAX SCHOOL, INC. is a citizen of Virginia.

#### 25 JURISDICTION

26  
27 5. This is an action for declaratory relief pursuant to 28 U.S.C. § 2201. This Court has  
28 subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. § 1131 (federal

1 question), copyright infringement under 17 U.S.C. § 501 *et. seq.* This Court also has jurisdiction  
 2 over this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship  
 3 between the Lopez Plaintiffs and Defendant ITS and there is more than \$75,000 in controversy in  
 4 this action.

5 6. The Court has personal jurisdiction over ITS in that ITS, on information and belief,  
 6 regularly does business in the state of California and in this district and sells its materials and  
 7 services to residents of the state of California. On information and belief, ITS regularly transacts  
 8 business through a persistent course of conduct deriving substantial revenue through sales, licensing  
 9 and training in California and this district.

10 7. ITS claims that Lopez Tax Service, Inc. contracted with it in this district to distribute  
 11 its materials and alleges that the Lopez Plaintiffs, as competitors in this district, have continued to  
 12 use, reproduce and sell its materials in this district.

13 8. ITS has sufficient contacts with California to be subject to personal jurisdiction in this  
 14 District

#### 15 VENUE

16 9. Venue is proper in the United States District Court for the Northern District of  
 17 California pursuant to 28 U.S.C. § 1391(b) in that the Defendant ITS has alleged that the Plaintiffs  
 18 are infringing numerous of its copyrights in this district and this district is where a substantial part of  
 19 the events giving rise to the claim allegedly occurred.

#### 20 ALLEGED COPYRIGHT INFRINGEMENT

21 10. ITS claims to own various valid copyrights in documents concerning preparation of  
 22 income tax returns, the claimed "ITS works," to wit:

- 23 a. Comprehensive Income Tax Course – 2009 (Reg. No. TX 7-418-027)
- 24 b. Comprehensive Income Tax Course – 2008 (Reg. No. TX 7-418-016)
- 25 c. Comprehensive Income Tax Course – 2010 (Reg. No. TX 7-418-038)
- 26 d. Comprehensive Income Tax Course – 2011 (Reg. No. TX 7-418-035)
- 27 e. California Comprehensive 2008 (Reg. No. TX 7-418-020)
- 28 f. California Comprehensive 2009 (Reg. No. TX 7-418-023)

- g. California Comprehensive 2010 (Reg. No. TX 7-418-042)
- h. California Comprehensive 2011 (Reg. No. TX 7-418-032)
- i. Comprehensive New York State Supplement (Reg. No. TX 7-459-640)
- j. State Returns Resident, Part-Year and Nonresident Seminar (Reg. No. TX 7-475-032)
- k. State Returns Resident, Part-Year and Nonresidents (Reg. No. TX 7-459-430)
- l. Oregon 80-Hour Basic Tax Course (Reg. No. TX 7-470-202)
- m. Amended Returns Seminar (Reg. No. TX 7-460-816)
- n. The Income Tax School Seminar Series – Nonresident Alien Returns – Form 1040 NR (Reg. No. TX 7-475-034)
- o. Nonresident Alien Returns Seminar (Reg. No. TX 7-460-833)
- p. The Income Tax School Seminar Series – Earned Income Credit (2011) (Reg. No. TX 7-460-832)
- q. The Income Tax School Seminar Series – Earned Income Credit (2010) (Reg. No. TX 7-460-838)
- r. Clergy Seminar (Reg. No. 7-460-839)
- s. The Income Tax School – Clergy Instructors Manual and The Income Tax School – Clergy Student Manual (Reg. No. TX 7-458-972)
- t. Schedule C – Seminar (Reg. No. TX 7-475-024)
- u. Retirement Plans Seminar (Reg. No. TX 7-475-028)
- v. Rental Property Seminar (Reg. No. 7-475-029)

11. ITS has alleged that Lopez has, without permission, copied the ITS works, has created substantially similar or derivative works, has distributed unauthorized copies and derivative copies, and has removed ITS' copyright notice from ITS' works, causing damage to ITS.

12. ITS has alleged that Lopez conduct in publishing and selling income tax continuing education materials has violated the Copyright Act and also the Digital Millennium Copyright Act.

13. Lopez has not copied or created any derivatives of any ITS works protectable under the Copyright Act. Lopez has not distributed any unauthorized copies or derivatives of protectable

1 ITS works, and has not removed copyright notices from ITS' works.

2 14. Instead Lopez Tax Service, Inc. has independently created a variety of educational  
3 materials for income tax professionals that are, of necessity, based on Internal Revenue Service or  
4 state tax forms, rules and procedures, and are for that reason similar to so some non-protectable  
5 elements of materials sold by ITS. But Lopez Tax Service, Inc.'s materials bear no similarity to  
6 protectable elements of the claimed ITS works.

7 15. The ITS works are instructions for tax preparers to use in an office setting while  
8 completing specific federal or state tax forms. But Lopez' independently created materials are  
9 instead broadly educational materials designed to prepare tax professionals to take and pass the  
10 Internal Revenue Service Registered Tax Return Preparer (RTRP) test. Certain tax preparers are  
11 required to take and pass the RTRP test in order to be qualified to sign tax returns as the preparer.

12 16. Certain tax preparers are also required to take fifteen hours of continuing education  
13 each year. Lopez Tax Service, Inc. has created educational courses to meet the requirements of the  
14 IRS for continuing education and to prepare tax professionals to take the RTRP test.

15 17. Lopez Tax Service, Inc. has also created Spanish language versions of its educational  
16 materials to assist tax professionals whose first language is not English, although the RTRP test must  
17 be taken in English and tax forms must be prepared in English.

18 18. The materials created by Lopez Tax Service, Inc. are unique in many respects and are  
19 independently protectable under copyright law, including its Spanish language versions that explain  
20 tax concepts.

21 19. Lopez Tax Service, Inc. does not copy or distribute any ITS works or derivatives.

22 20. Latino Tax Professionals Association, LLC provides services and materials to tax  
23 professionals whose primary language is Spanish. As an approved IRS Continuing Education  
24 Provider, it sells continuing education and RTRP test preparation materials prepared by Lopez Tax  
25 Service, Inc. to association members and to others. It does not copy or distribute any ITS works.

26 21. The Plaintiffs have not wrongfully caused ITS any damages.

27 **ALLEGED DISPARAGEMENT**

28 22. ITS claims that Lopez has published false or misleading statements about the Lopez



1 Tax Service, Inc. tax training materials or about ITS products or services causing people to have a  
2 less favorable view of ITS' products or services.

3 23. ITS claims that Lopez has published false or misleading comparisons of Lopez Tax  
4 Service, Inc. materials to tax preparation products or services of ITS.

5 24. ITS claims that Lopez has advertised or published false or misleading statements to  
6 attendees at trade shows to the effect that Lopez' educational materials are superior to those of its  
7 competitors including ITS.

8 25. ITS claims that during an industry trade show, Lopez published false or misleading  
9 statements unfavorably comparing ITS' products to Lopez' products, including its Spanish language  
10 materials, saying that Lopez had done all the heavy lifting in preparing tax instructions in Spanish  
11 while ITS offers few tax instruction materials in the Spanish language versions.

12 26. ITS claims that Lopez has published statements that deprecated and belittled ITS or  
13 its products and services.

14 27. ITS claims that Lopez' published statements expressly deprecated and belittled ITS'  
15 products and services which caused it pecuniary damage.

16 28. In fact Lopez has published no false or misleading statements that deprecated and  
17 belittled ITS' products and services.

18 29. Lopez has not wrongfully caused ITS any damages.

### 19 **FIRST CAUSE OF ACTION**

#### 20 **Declaratory Relief – No Copyright Infringement**

21 30. Lopez incorporates the allegations in the above paragraphs of this Complaint as  
22 though fully alleged herein.

23 31. ITS threatens to sue Lopez in a Virginia court for copyright infringement and  
24 violation of the Digital Millennium Copyright Act.

25 32. Lopez denies that it has infringed any rights of ITS under the Copyright Act or the  
26 Digital Millennium Copyright Act.

27 33. An actual bona fide controversy exists between Lopez and ITS that requires judicial  
28 declaration by this Court that Lopez has not infringed any valid and protectable copyrights of ITS.

1 34. An actual bona fide controversy exists between Lopez and ITS that requires judicial  
2 declaration by this Court that Lopez has not violated any rights of ITS under the Digital Millennium  
3 Copyright Act.

4 **SECOND CAUSE OF ACTION**

5 **Declaratory Relief – No Disparagement**

6 35. Lopez incorporates the allegations in the above paragraphs of this Complaint as  
7 though fully alleged herein.

8 36. ITS threatens to sue Lopez in a Virginia court for disparagement of its goods and  
9 services.

10 37. Lopez denies that it has disparaged ITS' good and services.

11 38. An actual bona fide controversy exists between Lopez and ITS that requires judicial  
12 declaration by this Court that Lopez has not disparaged ITS' products or services.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Lopez prays for judgment against Defendant ITS as follows:

15 1. A judicial declaration that Lopez has not infringed any valid and protectable  
16 copyrighted work of ITS;

17 2. A judicial declaration that Lopez has not violated any rights of ITS under the Digital  
18 Millennium Copyright Act;

19 3. A judicial declaration that Lopez has not disparaged ITS;

20 4. Award of costs of suit herein;

21 5. Such other and further relief as this Court may deem just and proper.

22 Dated: May 23, 2012

**GAUNTLETT & ASSOCIATES**

23 By:   
24

David A. Gauntlett  
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25 Attorneys for Plaintiffs  
26 LOPEZ TAX SERVICE, INC., CARLOS C.  
27 LOPEZ, KRISTEENA S. LOPEZ, and LATINO  
28 TAX PROFESSIONALS ASSOCIATION, LLC